

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

PAN PACIFIC YACHTS, INC.,

Plaintiff and Appellant,

v.

VITECH MARINE COMPANY, LTD.,

Defendant and Respondent.

D042387

(Super. Ct. No. GIC 791235)

APPEAL from an order of the Superior Court of San Diego County, William R. Nevitt, Jr., Judge. Affirmed.

Plaintiff Pan Pacific Yachts, Inc. (Pan Pacific) appeals an order granting defendant's, Vitech Marine Company, Ltd. (Vitech), motion to quash service of summons on Pan Pacific's complaint for breach of contract and conversion. Pan Pacific's complaint alleged that Vitech failed to deliver a yacht in breach of contract and that Vitech converted Pan Pacific's \$75,000 deposit for that yacht by refusing to return it. The court

granted the motion to quash service of summons because Pan Pacific failed to establish sufficient contacts with California to support specific jurisdiction and because Vitech showed that exercise of jurisdiction would be unreasonable. We affirm the order on the grounds of failure to establish sufficient contacts and decline to address the issue of reasonableness as unnecessary.

STATEMENT OF FACTS

Pan Pacific is a Delaware corporation with an office in San Diego, California. Vitech is a Taiwan corporation with all offices and factories located in Taiwan. Vitech does not own property in California and has no employees in California. Pan Pacific and Vitech entered into an exclusive dealer agreement under which Pan Pacific contracted to buy at least three yachts from Vitech for resale in the Western United States. These contracts did not include a choice of law or jurisdiction selection clause. The warranty provision of the dealer agreement provided for Vitech to assume any costs of repairs in excess of two percent of the dealer's price.

According to Vitech, the parties conducted most of the negotiations of the dealer agreement and purchase contracts in Taiwan. Vitech asserts that performance of the purchase contracts, including construction of the yachts, payment, and delivery, took place in Taiwan. According to Pan Pacific, the parties met in California to discuss the dealership agreement, conducted further negotiations by correspondence, and then Pan Pacific signed the agreement in California.

Vitech transferred title and delivered one yacht (the subject of this controversy)¹ to a third party arguing breach of the purchase contract by Pan Pacific for failure to pay. Vitech did not return the deposit paid by Pan Pacific for this yacht. Pan Pacific contends that Vitech transferred title of the yacht to Pan Pacific by providing a Builder's Certificate of Origin, and Pan Pacific contends that it could perform its remaining contractual obligations. Pan Pacific served Vitech in Taiwan, suing for breach of contract and conversion.

DISCUSSION

I

STANDARD OF REVIEW

We review the trial court's resolution of factual conflicts under the substantial evidence standard. (*People v. Mickey* (1991) 54 Cal.3d 612, 649; *Integral Development Corp. v. Weissenbach* (2002) 99 Cal.App.4th 576, 585.) Under this standard, "the power of an appellate court *begins and ends* with the determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the finding of fact." (*Grainger v. Antoyan* (1957) 48 Cal.2d 805, 807.) "Substantial evidence is . . . evidence . . . of ponderable legal significance, . . . reasonable in nature, credible, and of solid value.' [Citations.]" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873 (italics omitted).) Such evidence may be in the form of declarations. (*Atkins, Kroll & Co. v. Broadway Lumber Co.* (1963) 222 Cal.App.2d 646, 654.) If supported by substantial

¹ The parties agree that the ultimate destination for this yacht was known by both to

evidence, the trial court's resolution of conflict will not be disturbed on appeal. (*Kroopf v. Guffey* (1986) 183 Cal.App.3d 1351, 1356.)

II

MINIMUM CONTACTS

California's Code of Civil Procedure section 410.10 permits state courts to exercise personal "jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." Therefore, specific personal jurisdiction is constitutionally asserted if the defendant established minimum contacts with the state such that "the assertion of jurisdiction does not violate "traditional notions of fair play and substantial justice." [Citations.]" (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444-445, quoting *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.) Under the minimum contacts analysis, the defendant's "conduct and connection" with the forum must be such that it "should reasonably anticipate being haled into court there." [Citation.]" (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 474 (*Burger King*).) This standard will be met if (1) the defendant purposefully directs its activities at the residents of the forum or (2) purposefully avails itself of the "benefits and protections" of the forum. (*Id.* at pp. 475-476.) The unilateral activity of another party is insufficient to establish purposeful availment. (*Id.* at p. 475.) The plaintiff bears the burden of establishing that the defendant's contacts with the forum meet this minimum contacts threshold. (*Vons Companies, supra*, 14 Cal.4th at p. 449.)

be Mexico.

Here, the record contains substantial evidence supporting the trial court's ruling that Pan Pacific failed to establish that Vitech met the minimum contacts threshold. Pan Pacific argues that Vitech met the threshold, in part, by purchasing yacht components from California, entering into a contract with another party accepting San Diego venue and jurisdiction for dispute resolution, hiring an agent to conduct business in California, and by virtue of the company's president traveling regularly to the United States, including California. Specific personal jurisdiction, however, differs from general personal jurisdiction in that the controversy must relate to or arise out of the defendant's contacts with the forum. (*Integral Development Corp. v. Weissenbach, supra*, 99 Cal.App.4th at pp. 583-584.) This controversy does not relate to or arise out of the general contacts alleged by Pan Pacific. Consequently, these contacts, even if uncontradicted by the record, are not relevant to the assertion of specific personal jurisdiction.

Pan Pacific also argues that Vitech's act of entering into dealership agreements with other parties in the United States supports minimum contacts with the forum. Pan Pacific does not allege, however, that any of these other parties or contracts have any connection with California. Consequently, even if not contradicted by the record, these other dealership agreements do not support a finding of minimum contacts with the forum.

In addition, Pan Pacific argues that Vitech established minimum contacts by entering into the dealership agreement with and selling yachts to Pan Pacific, a California resident. A contract having a "substantial connection" to the forum state might be

sufficient to assert jurisdiction if the suit is based on that contract. (*Safe-Lab, Inc. v. Weinberger* (1987) 193 Cal.App.3d 1050, 1053-1054.) In evaluating the sufficiency of a contract in establishing minimum contacts, we evaluate factors such as "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing." (*Burger King, supra*, 471 U.S. 462, 479.) Here, the declarations of Vitech's president support a finding that the parties negotiated the dealership agreement and purchase contracts mostly while Pan Pacific visited Vitech's facilities in Taiwan and that performance of the contractual obligations occurred in Taiwan. Also, the dealership agreement specified delivery of F.O.B. Taiwan² limiting Vitech's contemplated contact with California in its performance of the contracts. Vitech's act of providing Pan Pacific a Builder's Certificate of Origin, even if that document does transfer title, is not inconsistent with the parties' intent to deliver the yacht to Pan Pacific in Taiwan. Therefore, these contracts lack a "substantial connection" with California and are insufficient to establish "conduct and connection" with the forum such that Vitech "should reasonably anticipate being haled into court there." (*Id.* at p. 474.)

² California Commercial Code section 2319, subdivision (1) provides: "Unless otherwise agreed the term F.O.B. (which means 'free on board') at a named place, even though used only in connection with the stated price, is a delivery term under which [¶] (a) When the term is F.O.B. the place of shipment, the seller must at that place ship the goods . . . and bear the expense and risk of putting them into the possession of the carrier" California Commercial Code section 2509, subdivision (1) further provides that "Where the contract requires or authorizes the seller to ship the goods by carrier [¶] (a) If it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier"

Further, Pan Pacific argues that Vitech purposefully availed itself of the protections of California by virtue of the warranty arrangement under which Vitech took responsibility for repairs in excess of two percent of the dealer's price. Pan Pacific contends that Vitech should reasonably anticipate being haled into court in California for any warranty litigation resulting from Pan Pacific's sales where the cost of a repair exceeds the two percent limit. However, Pan Pacific's act of entering into a resale contract with a third party, specifying California as jurisdiction and venue, is not an act attributable to Vitech. Instead, it is a unilateral act of another party which does not constitute Vitech's purposeful availment of the forum benefits and protections. (*Burger King, supra*, 471 U.S. 462, 475.)

Finally, Pan Pacific argues that Vitech's acts of not returning the deposit and of transferring title to a third party amount to an intentional tort purposefully directed and causing harm to a resident of California. Under *Calder v. Jones* (1984) 465 U.S. 783, an intentional tort could sufficiently establish minimum contacts with the forum. The declarations of Vitech's president, however, support the conclusions that Pan Pacific breached the purchase contract by failing to make timely payments and that Pan Pacific owed Vitech more than the amount of the deposit. Therefore, the record contains substantial evidence to support the trial court's finding that Vitech did not establish minimum contacts by purposefully directing a tortious act at a California resident.

For the reasons above, Pan Pacific has failed to meet its burden of establishing Vitech's minimum contacts with the forum. The trial court's ruling is supported by substantial evidence and will not be disturbed on appeal.

DISPOSITION

The order is affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.